

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES A. NOYES, a married man,

Plaintiff,

v.

STATE FARM GENERAL INSURANCE  
COMPANY; STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY,  
STATE FARM LIFE INSURANCE  
COMPANY, STATE FARM FIRE AND  
CASUALTY COMPANY; DOE  
COMPANIES 1-5,

Defendant.

Case No. C08-5032 RBL

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

THIS MATTER is before the Court on Defendant's motion for Summary Judgment [Dkt. #23]. The Court has reviewed the materials submitted for and against said motion and has denied Defendant's request for oral argument. For the reasons set forth below, the motion is GRANTED.

**I. Introduction**

Plaintiff was a State Farm insurance agent from 1961 until November, 2004, when he submitted a letter notifying Defendant of his retirement. Dkt. #26-4, Noyes Dep., p. 31 (Salgado Dec. p. 6),

1 (Document Sealed). The terms of the relationship between State Farm<sup>1</sup> (Defendant) and Plaintiff are set  
2 forth in a written Agent's Agreement, "AA3"<sup>2</sup>. *See e.g.* Dkt. #26-3, Agent's Agreement Form AA3  
3 (Salgado Dec. pp. 53-61). Pursuant to AA3, Plaintiff operated as an independent contractor and  
4 exclusively offered Defendant's insurance to potential policy holders. *Id.* Defendant has used similar  
5 "exclusive agents" for over fifty years [Dkt. #23]. Plaintiff was not required to pay fees or any other  
6 money to Defendant in order to become an independent contractor agent. Dkt. #29, Noyes Dep., p. 92  
7 (Salgado Dec. pp. 14-24).

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9 The current action concerns the events leading up to Plaintiff's retirement on November 30, 2004.  
10 State Farm began investigating complaints of sexual harassment against Plaintiff after receiving a letter  
11 from one of Plaintiff's employee's dated November 5, 2004 [Dkt. #26-3] (Document Sealed). On  
12 November 11, 2004, Mr. Gary Gipson, an audit investigator for State Farm, interviewed three female  
13 employees and discovered detailed accounts supporting claims of sexual harassment against Plaintiff by  
14 the three women. *Id.* On November 15, 2004, Mr. Gipson interviewed Plaintiff regarding the sexual  
15 harassment claims and the specific allegations [Dkt. #23]. On November 18, 2004, Plaintiff met with Ms.  
16 Carolyn Lee, Agency Vice President for State Farm, and Mr. Gipson again to discuss the sexual  
17 harassment claims. *Id.* Statements made at this meeting are central to Plaintiff's claims in the pending  
18 action and are discussed in greater detail below. However, on November 23, 2004, Plaintiff submitted a  
19 letter notifying Defendant of his retirement effective November 30, 2004 [Dkt. #26-4] (Document  
20 Sealed).

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23 Plaintiff filed suit in Pierce County Superior Court on November 7, 2007, and the matter was  
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27 <sup>1</sup>Plaintiff's Agent Agreement includes an appointment for Defendants State Farm Mutual Automobile Insurance Company,  
State Farm Life Insurance Company, State Farm Fire and Casualty Company and State Farm General Insurance Company.

28 <sup>2</sup>The Agent's Agreement has been updated several times since 1961. As such the Court refers to the most recent Agent's  
Agreement as "AA3."

1 removed to this Court on January 15, 2008<sup>3</sup> [Dkt. #1].

2 Plaintiff has offered materially conflicting recounts of the November 18, 2004 meeting with Ms.  
3 Lee and Mr. Gipson. In his deposition dated October 14, 2008, Plaintiff gives the following recount of  
4 the meeting and the limited facts he could recall regarding what he perceived to be a threat to his  
5 retirement benefits:  
6

7 Q [Questioning Plaintiff] What else do you recall?

8 A [Plaintiff Answering] She [Ms. Lee] said something to the effect that “Jim, I think you had  
9 better retire.” And I said, “why should I retire?” And she says [sic], “If you don’t, and  
10 State Farm will bring up [sic] all your previous employees”—and I’ve forgotten the  
11 wording she used—“and question them about activities in the office,” etcetera, etcetera. *She*  
12 *[Ms. Lee] made reference to retirement at one point—retirement income, I’m sorry, which*  
13 *led me to believe that she was going to jerk my retirement income if I didn’t retire.*  
14 (Emphasis added).

12 Q Can you recall—

13 A *I don’t remember the exact words.* One word I remember very well is that I asked her  
14 “if—if I were to retire, when would you want me to retire?” and she almost angrily said,  
15 “right now.” And I think I probably looked really shocked. And then she said, “well, by  
16 the end of the month,” which was like two weeks away, or a week and a half away or  
17 something. (Emphasis added).

18 Q Anything else you can recall about the meeting with Ms. Lee?

19 A I don’t recall any right now.

20 ...  
21 Q You indicated that Ms. Lee made reference to retirement income at one point, and I think  
22 you said that you couldn’t remember the exact words?

23 A *True. I cannot remember the exact words.* (Emphasis Added).

24 Q Can you remember anything about the reference to retirement income she made?

25 A *I can’t remember the words. I remember the feeling.* (Emphasis Added).

26 Q And that led you to believe that somehow they would jerk your retirement—

27 A Absolutely.

28 Q —Away?

29 A Yeah. *She used words that implied that my retirement could be in jeopardy.* I don’t  
30 remember the words.

31 Q Do you have any documents that would refresh your recollection?

32 A No. That’s why I hope that Gibson [sic] was taking notes.

33 Q Can you remember anything else about the meeting on Thursday with Ms. Lee?

34 A I know this is critical, and I wish I could.

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37 <sup>3</sup>While neither party to the action raised the issue, it should be noted that Plaintiff’s Franchise Investment Protection Act  
38 (FIPA) claims are barred by the Statute of Limitations. RCW 4.16.130 provides a 2-year statute of limitations period as a “catchall”  
for statutes that otherwise fail to specify a limitations period. *See also Unisys Corp. v. Senn*, 99 Wn.App. 391, 395, 994 P.2d 244  
(2000). Plaintiff’s FIPA claims would have accrued at the latest on November 30, 2004 (upon Plaintiff’s retirement), and would  
have been time-barred on December 1, 2006.

1 Dkt. #29, Noyes Dep., p. 150-53 (Salgado Dec. pp. 22-25). However, in a declaration filed over five-  
2 months later on February 20, 2009, Plaintiff seems to recall more concretely a direct threat made by Ms.  
3 Lee at the November 18, 2004 meeting:

4  
5 “When I asked what would happen if I did not retire, she [Ms. Lee] informed  
6 me that a full investigation would be done *and I could lose my retirement*  
7 *benefits. While it is true I cannot remember the exact words she used*, she  
8 made it very clear that my retirement income was in jeopardy if I did not  
9 immediately retire. I am unmistakable in this point that *she directly threatened*  
10 *my retirement benefits* and that the only way those benefits would not be placed  
11 in jeopardy was to retire immediately” [Dkt. #28], (Noyes Dec., pp.4-5).

12 While Plaintiff now alleges that Ms. Lee made a “direct threat” to his retirement benefits, Plaintiff  
13 has yet to provide any actual statements made by Ms. Lee at the November 18, 2004 meeting. It is  
14 important to point out that in the first recount of the meeting, Plaintiff alleges only that he “felt” that Ms.  
15 Lee “implicitly” threatened his retirement benefits, while in the second recount of the meeting he alleges  
16 a “direct threat” against his retirement benefits occurred<sup>4</sup>.

17 It is uncontested that Ms. Lee lacks the authority to revoke Plaintiff’s retirement benefits. Dkt.  
18 #29, Lee Dep., p. 30 (Salgado Dec., p. 29). Plaintiff’s retirement benefits are secured by the AA3  
19 contract entered into jointly by Plaintiff and State Farm. *See e.g.* Dkt. #26-3, Agent’s Agreement Form  
20 AA3 (Salgado Dec. pp. 58-61) (manner in which agent is terminated is irrelevant to payment of  
21 retirement benefits).

22 Plaintiff pursues the following claims: (1) common law fraud, (2) common law negligent  
23 misrepresentation, (3) breach of duty of good faith and fair dealing required by the Franchise Investment  
24 Protection Act (FIPA), (4) fraud under the FIPA, and (5) unfair and deceptive acts in violation of  
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28 <sup>4</sup>“Retirement benefits” as used in this order are those payments referred to in the AA3 Agreement, Sections IV and V. These payments generally refer to percentages of payments an agent continues to receive for the years after termination based on the policies he or she personally produced as an active agent for the insurance company.

1 Washington's Consumer Protection Act RCW 19.86<sup>5</sup>. Defendant moves for summary judgment on all of  
2 the above claims.

## 3 4 **II. Discussion**

5 Summary judgment is proper "if the pleadings, the discovery and disclosure materials on file, and  
6 any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to  
7 judgment as a matter of law." Fed. R. Civ. P. 56(c). In determining whether an issue of fact exists, the  
8 Court must view all evidence in the light most favorable to the nonmoving party and draw all reasonable  
9 inferences in that party's favor. *Anderson Liberty Lobby, Inc.*, 477 U.S. 242, 248-50 (1986); *Bagdadi v.*  
10 *Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). A genuine issue of material fact exists where there is  
11 sufficient evidence for a reasonable factfinder to find for the nonmoving party. *Anderson*, 477 U.S. at  
12 248. The inquiry is "whether the evidence presents a sufficient disagreement to require submission to a  
13 jury or whether it is so one-sided that one party must prevail as a matter of law." *Id.* At 251-52. The  
14 moving party bears the initial burden of showing that there is no evidence which supports an element  
15 essential to the nonmovant's claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the movant  
16 has met this burden, the nonmoving party then must show that there is a genuine issue for trial. *Anderson*,  
17 477 U.S. at 250. If the nonmoving party fails to establish the existence of a genuine issue of material fact,  
18 "the moving party is entitled to judgment as a matter of law." *Celotex*, 477 U.S. at 323-24.  
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### 21 **A. Common Law Fraud Claim**

22 Plaintiff claims that Defendant fraudulently induced his retirement when Ms. Lee improperly  
23 threatened his retirement benefits at the November 18, 2004 meeting. To succeed with a common law  
24 fraud claim a plaintiff must prove the following nine elements: (1) a representation of an existing fact, (2)  
25 the fact's materiality, (3) falsity, (4) the speaker's knowledge of the falsity or ignorance of its truth, (5)  
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28 <sup>5</sup>Plaintiff has abandoned his claim for age discrimination under the Washington Law Against Discrimination [Dkt. #27].

1 the speaker's intention that it be acted upon by the plaintiff, (6) the plaintiff's ignorance of its falsity, (7)  
2 reliance, (8) plaintiff's right to rely, and (9) damages<sup>6</sup>. *Martin v. Miller*, 24 Wn.App. 306, 308, 600 P.2d  
3 698 (1979); *see also Stiley v. Block*, 130 Wash.2d 486, 505, 925 P.2d 194 (1996).

4  
5 Plaintiff has failed to produce evidence supporting the requisite elements of his common law fraud  
6 claim. In Plaintiff's first recount of the November 18, 2004 meeting he could not offer any statements  
7 made by Ms. Lee which would support a representation of existing fact for his fraud claim. The alleged  
8 fraudulent implication made by Ms. Lee was that she had the power to revoke Plaintiff's retirement  
9 benefits, when in fact she did not have such power under the terms of the Agent's Agreement. Dkt. #26-  
10 3, Agent's Agreement Form AA3 (Salgado Dec. pp. 53-61). Even if Ms. Lee had implied that she could  
11 revoke Plaintiff's retirement benefits, such a statement would not qualify as an existing fact. Viewed in  
12 the light most favorable to Plaintiff, the only known facts are that he was left with a "feeling" or  
13 "impression" that his retirement benefits would be "jerked" from him at some point in the future. Dkt.  
14 #29, Noyes Dep., p. 150-53 (Salgado Dec. pp. 22-25). Plaintiff stated "[Ms. Lee] used words that implied  
15 that my retirement could be in jeopardy. I don't remember the words." *Id.* Fraud requires the  
16 misrepresentation of existing fact. Plaintiff has not asserted any misrepresentation of existing fact; rather,  
17 Plaintiff asserts that he inferred from what Ms. Lee was saying that his retirement benefits would be in  
18 jeopardy if he did not retire. Plaintiff fails to offer any factual support for this assertion, other than his  
19 "gut feeling" in his deposition given on October 14, 2008.

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22 Plaintiff's slightly altered recount of the meeting given in his February 20, 2009 declaration does  
23 not compel a different conclusion. Instead of relying on his gut feeling, Plaintiff now alleges that Ms. Lee  
24 informed him that he could lose his retirement if he did not retire and that Ms. Lee directly threatened his  
25 retirement benefits. Dkt. #28, Noyes Dec., p. 4. In any event, Plaintiff still fails to establish a  
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<sup>6</sup>Each element must be proved by clear, cogent, and convincing evidence. *Martin*, 24 Wn.App. at 308.

1 representation of existing fact. Instead of relying on a “feeling” or “impression” that Ms. Lee would  
2 revoke his retirement benefits, Plaintiff now cites to alleged direct threats to his retirement benefits  
3 coming from Ms. Lee during the meeting. While Plaintiff has not produced any statement that Ms. Lee  
4 made regarding the threat to his retirement benefits, he now alleges that such a statement was made. Put  
5 another way, on October 14, 2008, Plaintiff could not recall any statements threatening his retirement  
6 benefits; however, on February 20, 2009, over four months later, Plaintiff recalls statements directly  
7 threatening his retirement benefits (although he is still unable to recall any of the words used in those  
8 threats). Even if the Court were convinced that Ms. Lee made the alleged direct threat, such would still  
9 not suffice for a representation of an existing fact. The alleged threat to his retirement benefits is not a  
10 current fact; rather, it is a hypothetical alternative in the event that Plaintiff did not immediately retire.  
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12  
13 The United States Supreme Court has rejected parties’ efforts to use similar contradictions in  
14 avoiding summary judgment stating, “a party cannot create a genuine issue of fact sufficient to survive  
15 summary judgment simply by contradicting his or her own previous sworn statement without explaining  
16 the contradiction or attempting to resolve the disparity.” *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S.  
17 795, 805 (1999). Plaintiff offers no explanation for the disparity between his October 14, 2008 and  
18 February 20, 2009 testimonies. Moreover, he offers no actual statements made by Ms. Lee at the meeting  
19 amounting to representations of existing fact that meet the requirements of a fraud claim. At most,  
20 Plaintiff offers his interpretation of what Ms. Lee said, and that what she said amounted to a direct threat.  
21

22  
23 Plaintiff also fails to prove at least two other elements of his fraud claim, namely, that he had a  
24 right to rely on information from Ms. Lee in retiring, and that damages resulted from his reliance.  
25 Assuming arguendo that a representation of fact was made by Ms. Lee to Plaintiff at the November 18,  
26 2004 meeting regarding a threat to his retirement benefits, Plaintiff would still have no right to rely on  
27 Ms. Lee’s representation. Plaintiff was himself a party to the AA3 contract with State Farm, which  
28 apparently controlled his retirement benefits. Plaintiff signed the contract himself and is assumed to be

1 put on notice of the terms therein. Simply because an administrative official of State Farm told Plaintiff  
2 that he could lose his retirement benefits does not make it so. Moreover, such a statement fails to  
3 establish grounds for an actionable fraud claim. Plaintiff has struggled in demonstrating any way in  
4 which he was justified in relying on Ms. Lee's alleged statements regarding his retirement benefits.  
5 Plaintiff has never articulated any factual scenario which would allow Ms. Lee to actually carry out the  
6 alleged threat and jeopardize his retirement benefits. Plaintiff had a right to rely on the AA3 contract and  
7 its terms (a legally binding agreement); however, he had no reason to rely on the representations of Ms.  
8 Lee who was powerless to affect the reciprocal obligations under the contract or in any way empowered  
9 to alter its terms.  
10

11  
12 In an attempt to support his damages claim, Plaintiff argues that but for his forced retirement, he  
13 would have worked at his position for another seven years [Dkt. #27]. This argument is unconvincing for  
14 two reasons. First, there is a wealth of evidence against Plaintiff in the three sexual harassment claims by  
15 his employees in November of 2004. *See e.g.* Dkt. #26-3, Special Activity Report, pp. 87-102, (Salgado  
16 Dec., Ex.2 pp. 47-51., Ex.3 pp. 1-11). Indeed, State Farm settled with the three women for about  
17 \$75,000.00 total. Dkt. #26-2, Noyes Dep., p. 215 (Salgado Dec. pp.14-24) (Document Sealed). The  
18 ongoing risk posed by employing Plaintiff would have, and indeed did, move State Farm to quickly begin  
19 the termination review process against Plaintiff. The harassment letter was submitted to State Farm on  
20 November 5, 2004, and by November 18, 2004 Plaintiff was engaged in termination discussions with Ms.  
21 Lee and Mr. Gipson.  
22

23  
24 Second, notwithstanding the sexual harassment settlement, Plaintiff's employment with State  
25 Farm was terminable by either party at any time with or without cause. Had the sexual harassment claims  
26 not amounted to a financial burden to State Farm, Plaintiff would still be subject to termination at any  
27 point at the discretion of State Farm. State Farm could have fired Plaintiff for a litany of legal reasons  
28 including its desire or need to avoid any bad publicity associated with Plaintiff's alleged sexual



1 harassment toward his employees. In any event, Plaintiff's claim that he would have worked another  
2 seven years but for his forced retirement does not follow logically. Because Plaintiff fails to establish  
3 several elements of his common law fraud claim, Defendant's motion for summary judgment on this issue  
4 is GRANTED.  
5

6 **B. Negligent Misrepresentation**

7 Plaintiff also alleges that Defendant negligently misrepresented that it could jeopardize Plaintiff's  
8 retirement benefits if he did not immediately retire. Negligent misrepresentation claims require a plaintiff  
9 to establish the following six elements: (1) that the defendant supplied information for the guidance of  
10 plaintiff in a business transaction that was false, (2) that defendant knew that information was provided to  
11 guide plaintiff in a business transaction, (3) that defendant was negligent in obtaining or communicating  
12 the false information, (4) that plaintiff relied on the false information, (5) that plaintiff's  
13 reliance on the information was justified, and (6) that the false information was the proximate cause of  
14 plaintiff's damages. *Lawyers Title Ins. Corp. v. Baik*, 147 Wn.2d 536, 545, 555 P.3d 619 (2002).  
15

16 As was the case with Plaintiff's fraud claim, there is insufficient evidence to support several  
17 elements of the negligent misrepresentation claim. Plaintiff offers no evidence of anything Ms. Lee  
18 actually said which would qualify as a "false statement" to Plaintiff in the November 18, 2004 meeting.  
19 Plaintiff's later assertion that Ms. Lee directly threatened his retirement benefits does not save his  
20 negligent misrepresentation claim. Once again, the Court must consider the contradictory nature of the  
21 testimonies submitted by Plaintiff in support of his claim. As was the case with the fraud claim, Plaintiff  
22 offers no explanation for the disparity between his two testimonies. Plaintiff has stated on several  
23 occasions that he cannot remember any of the words used by Ms. Lee in the meeting, and as such he has  
24 failed to establish the first element of his negligent misrepresentation claim.  
25

26 Plaintiff cannot establish that Defendant was negligent in obtaining or communicating false  
27 information. Because Plaintiff cannot establish that false information was actually communicated, he  
28

1 cannot logically establish that said information was communicated negligently.

2 Plaintiff cannot establish that his reliance on false information was justified. Assuming arguendo,  
3 that there was a communication of false information by Ms. Lee to Plaintiff, any reliance on that  
4 information by Plaintiff was unjustified. For the same reasons that Plaintiff had no right to rely on Ms.  
5 Lee's representations for his fraud claim, he is similarly unjustified in relying on her representations for  
6 his negligent misrepresentation claim. Because Plaintiff fails to establish several elements of his common  
7 law negligent misrepresentation claim, Defendant's motion for summary judgment on this issue is  
8 GRANTED.  
9

### 10 **C. FIPA Claims**

11 Plaintiff claims that his relationship with Defendant triggered protection under the Franchise  
12 Investment Protection Act (FIPA). RCW 19.100 *et seq.* Specifically, Plaintiff claims Defendant  
13 committed fraud and breached its duty of good faith and fair dealing under the FIPA. The Washington  
14 State Legislature adopted FIPA to curb franchisor sales abuses and unfair competitive practices. *East*  
15 *Wind Express, Inc. v. Airborne Freight Corp.*, 95 Wn.App. 98, 102, 974 P.2d 369 (1999) (Citations  
16 omitted). The FIPA defines only certain business relationships as constituting a franchise. It defines a  
17 franchise as:  
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- 20 (a) An agreement, express or implied, oral or written, by which:  
21 (i) A person is granted the right to engage in the business of offering,  
22 selling, or distributing goods or services under a marketing plan prescribed  
23 or suggested in substantial part by the grantor or its affiliate;  
24 (ii) The operation of the business is substantially associated with a  
25 trademark, service mark, trade name, advertising, or other commercial  
symbol designating, owned by, or licensed by the grantor or its affiliate; and  
(iii) *The person pays, agrees to pay, or is required to pay, directly or*  
*indirectly, a franchise fee.*

26 RCW 19.100.010(4) (emphasis added). Every element must be met in order to qualify the business  
27 relationship as a franchise and avail a plaintiff of the protections of the FIPA.  
28

Plaintiff has failed to establish the franchise fee requirement. Plaintiff admits that he has not paid

1 any money to State Farm for a franchise fee. Dkt. #24, Noyes Dep., pp. 92-102 (Salgado Dec., pp. 14-  
2 24). However, Plaintiff argues that by exclusively limiting his business to issuing only State Farm  
3 policies, and by allowing his customers and their information to become trade secrets of State Farm, he  
4 has indirectly paid a franchise fee. A franchise fee is defined as  
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6 any fee or charge that a franchisee . . . is required to pay . . . including but  
7 not limited to payment either in lump sum or by installments of an initial  
8 capital investment fee, any fee or charges based upon a percentage of gross  
9 or net sales whether or nor referred to as royalty fees, any payment for the  
mandatory purchase of goods or services or any payment for goods or  
services available only from the franchisor . . .

10 RCW 19.100.010(12). Indirect franchise fees have been found to exist only in situations where some  
11 amount of money has changed hands between franchisee and franchisor. *See e.g. Blanton v. Mobile Oil*  
12 *Corp.*, 721 F.2d 1207, 1220 (9th Cir. 1983) (holding that a requirement that franchisee purchase motor oil  
13 from franchisor at certain amounts above fair market value constitutes payment of an indirect franchise  
14 fee).  
15

16 Because Plaintiff has paid no money to State Farm he cannot, either directly or indirectly, satisfy  
17 the requirement of a franchise fee. The definition of a franchise fee does not purport to include an  
18 abstention from sales in other competitors' products or services. Nor does the definition purport to  
19 include customer's information as a form of payment by the franchisee constituting a franchise fee.  
20 Plaintiff's argument for a more expansive interpretation of what constitutes an indirect franchise fee finds  
21 no support in case law. Moreover, the plain meaning of the statute suggests that some exchange of money  
22 between franchisee and franchisor is required to satisfy the franchise fee requirement.  
23

24 Secondly, and in any event, insurance actions and transactions regulated under the insurance code  
25 are expressly exempted from the FIPA. The FIPA states:  
26

27 (b) The following shall not be construed as a franchise within the meaning of this  
chapter:

28 (ii) Actions or transactions otherwise permitted, prohibited or regulated  
under laws administered by the insurance commissioner of this state;

1  
2 RCW 19.100.010(4). The action of terminating an insurance agent is generally regulated by the insurance  
3 commissioner under WAC 284-17-445, which states “(1) An insurer may terminate an appointment by  
4 sending written notice of termination to the agent and by sending a notice of termination of the  
5 appointment to the commissioner electronically through NIPR, the commissioner’s web site, or on the  
6 form provided by the commissioner for that purpose.”

7  
8 Because Plaintiff was an insurance agent and his complaint centers on the action of his  
9 termination, RCW 19.100.010(4)(b)(ii) specifically exempts him from the protections of the FIPA.  
10 Plaintiff cannot avail himself of the protections of FIPA for the reasons stated above; therefore,  
11 Defendant’s motion for summary judgment on these issues must be GRANTED as a matter of law.

#### 12 **D. Consumer Protection Act Claim**

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14 Plaintiff initially claimed that his termination violated Washington State’s Consumer Protection  
15 Act (CPA). RCW 19.86 *et seq.* In his response to Defendant’s motion for summary judgment, Plaintiff  
16 changed his position stating “this claim rests upon the Court’s determination on whether FIPA is available  
17 in this case. If FIPA applies, so does the Consumer Protection Act claim” [Dkt. #27]. While the  
18 connection between the CPA and the FIPA is unclear, Plaintiff’s CPA claim fails in any event.

19  
20 In order to survive a summary judgment challenge, a plaintiff asserting a CPA claim must  
21 establish all five of the following elements: (1) an unfair or deceptive act or practice; (2) occurring in  
22 trade or commerce; (3) with a public interest impact; (4) injuring the plaintiff in his or her business or  
23 property; and (5) causation. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d  
24 778, 780, 719 P.2d 531 (1986).

25  
26 Plaintiff fails to address any of the five elements in his responsive briefing. Most notably lacking  
27 from the facts presented is any impact Plaintiff’s termination would have had on the public’s interest.  
28 The CPA is meant to deal with situations which transcend mere private party contracting disputes and

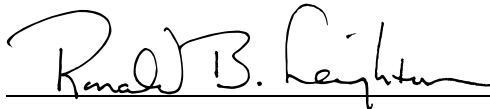
1 which have affected or will affect consumers generally. *Goodyear Tire & Rubber Co. v. Whiteman Tire,*  
2 *Inc.*, 86 Wn. App. 732, 744-45, 935 P.2d 628, 635 (1997). Because Plaintiff has failed to show any public  
3 interest impact, Defendant's motion for summary judgment on this issue is GRANTED as a matter of law.  
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5 **III. Conclusion**

6 For the reasons stated above, Defendant's motion for summary judgment on all issues is hereby  
7 GRANTED. Plaintiff's complaint is dismissed with prejudice.

8 IT IS SO ORDERED.  
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11 Dated this 1<sup>st</sup> day of April, 2009.  
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15 RONALD B. LEIGHTON  
16 UNITED STATES DISTRICT JUDGE  
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